

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CC FORD GROUP, LLC)	22-CV-4143-MAS
)	
Plaintiff)	
vs.)	
)	
JENNIFER JOHNSON, ET AL.)	
)	Trenton, NJ
)	October 24, 2022
Defendant)	2:49 p.m.

MOTION FOR AN ORDER TO SHOW CAUSE VIA TELECONFERENCE
BEFORE THE HONORABLE MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (PROCEEDINGS held via teleconferencing before the
2 Honorable Michael A. Shipp, United States District Judge,
3 at 2:49 p.m.)

4 THE COURT: Good afternoon, Counsel. This is the
5 matter of CC Ford Group West versus Johnson, et al., Docket No.
6 22-4143.

7 Who is on the line for the plaintiff?

8 MR. ADLER: Good afternoon, Your Honor, Steven Adler
9 and Janine Matton from Mandelbaum Barrett.

10 THE COURT: Okay. Good afternoon.

11 And who is on for the defendants? I understand we
12 have two -- go ahead and enter your appearance. I'm sorry.

13 MS. LURIA: Good afternoon, Your Honor. This is Amy
14 Luria from Critchley, Kinum & Luria on behalf of defendants,
15 Jennifer Johnson and Project Velocity. I'll allow my
16 co-counsel to introduce himself.

17 MR. SLARSKEY: Good afternoon, Your Honor, David
18 Slarskey from Slarskey LLC. I'm joined by Ms. Johnson also on
19 behalf of Project Velocity.

20 MR. O'CONNOR: Good afternoon, Your Honor, Bill
21 O'Connor, McElroy, Deutsch, Mulvaney & Carpenter, for Carrie
22 Bicking and Beth Weiler.

23 THE COURT: Okay. Is there anyone else on the line
24 today?

25 MS. STUDDIFORD: Yes, Cathleen Studdiford.

1 THE COURT: Okay. So this matter comes before the
2 Court by way of an application for emergency injunction. When
3 the matter was previously before the Court, I declined to fully
4 resolve the TRO application but advised the parties to resolve
5 their differences concerning certain aspects of the request to
6 relief, including, one, the return of the laptop that was
7 possessed by the defendant, Jennifer Johnson, and the update of
8 Johnson's LinkedIn profile to reflect that she departed CC Ford
9 Group West in March of 2022. My understanding from the letter
10 in correspondence is that the defendant -- that following that
11 conference, that both of those things have been resolved.

12 Now, the parties submitted additional briefing in
13 response to the TRO application. Now, ordinarily, I really
14 don't need to hear from the parties any further unless you
15 believe there's something additional beyond your papers. At
16 this time, the Court's really prepared to put a decision on the
17 record.

18 Is there anything else that needs to be said from
19 plaintiff's counsel, Mr. Adler?

20 MR. ADLER: Yes, Your Honor. Thank you. Just
21 briefly, I just want to be clear that at the time we submitted
22 the initial application, there were certain facts that our
23 client was aware of, and since the time we were before Your
24 Honor last, the conduct of the defendants have continued. So I
25 just wanted to point that out to the Court.

1 The matters that they are still working on are
2 referenced at the end of John Studdiford's reply certification
3 that we submitted to the Court, and I would submit, based upon
4 the continuing breaches and the various causes of action that
5 we set forth in the amended -- the verified amended complaint,
6 that restraints are needed at this time.

7 If Your Honor has any other questions of me based
8 upon what was stated, I'm happy to respond.

9 THE COURT: No, I don't. In fact, I think the papers
10 really speak for themselves.

11 Anything else from the defendants? And I know that,
12 Mr. O'Connor, you just recently joined in, but let me hear
13 first from Ms. Luria and company.

14 Anything further from your end?

15 MS. LURIA: Your Honor, Mr. Slarskey, I believe, will
16 answer Your Honor's questions.

17 THE COURT: Okay. Mr. Slarskey?

18 MR. SLARSKEY: No, Your Honor. I mean, we would just
19 point out, as Your Honor I'm sure noted, much of our argument
20 was addressed in our reply.

21 THE COURT: All right. Okay. Mr. O'Connor, anything
22 to add from you and from your side?

23 MR. O'CONNOR: No, thank you, Your Honor.

24 THE COURT: Okay. Let me put my decision on the
25 record here, folks. First and foremost, preliminary injunctive

1 relief is an extraordinary remedy and should be granted only in
2 limited circumstances. *Kos Pharmaceuticals, Inc. v. Andrx*
3 *Corp.* 369 F.3d 700, 708 (3d Cir. 2004) (quoting *American Tel. &*
4 *Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421,
5 1427 (3d Cir. 1994)). I'm not going to read any citations
6 here. Those will be in the transcript, if you should choose to
7 order it.

8 In deciding to issue temporary restraints or
9 preliminary injunction, the Court must weigh four factors:
10 One, whether the movant has shown a reasonable probability of
11 success on the merits; two, whether the movant will be
12 irreparably harmed by the denial of relief; three, whether
13 granting preliminary relief will result in either greater harm
14 to the nonmoving part; and, four, whether granting the
15 preliminary relief will be in the public interest. *Gerardi v.*
16 *Pelullo*, 16 F.3d 1363, 1373 (3d Cir. 1994).

17 Plaintiff bears the burden of showing that the
18 factors weigh in favor of granting injunctions. *Kos Pharms.*
19 *Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004). While
20 all four factors are important, failure to show either
21 likelihood of success on the merits or irreparable harm must
22 necessarily result in the denial of a preliminary injunction
23 application. *N.A.A.C.P. v. N. Hudson Reg'l Fire & Rescue*, 707
24 *F.Supp. 2d* 520, 542 (D.N.J. 2010) (quoting *In re Arthur*
25 *Treacher's Franchisee Litigation*, 689 F.2d 1137, 1143 (3d Cir.

1 1982)).

2 The irreparable harm requirement is met if a
3 plaintiff demonstrates a significant risk that he or she will
4 experience harm that cannot adequately be compensated after the
5 fact by monetary damages. *Adams v. Freedom Forge Corp.* 204
6 F.3d 475, 484-85 (3d Cir. 2000). See *Frank's GMC Truck Center,*
7 *Inc.*, 847 F.2d 102-03 (3d Cir. 1988). This burden is a
8 difficult one to meet because economic loss does not constitute
9 irreparable harm. *Acierno v. New Castle County*, 40 F.3d 645
10 653 (3d Cir. 1994). Irreparable connotes that which cannot be
11 repaired, retrieved, put down again, atoned for. *Id.*
12 (citations omitted). Moreover, the harm must also be
13 immediate. See *Quad/Tech, Inc. v. Q.I. Press Controls B.V.*,
14 701 F. Supp. 2d 644 655 (E.D. Pa. 2010) ("In order to make this
15 showing [of irreparable harm], the movant must clearly show
16 'immediate irreparable harm,' rather than a risk of harm.")
17 (quoting *Campbell Soup Co. v. ConAgra, Inc.*, 977 F.2d 86, 92
18 (3d Cir. 1992)).

19 Here the Court finds that plaintiff has failed to
20 meet its burden. The pleadings presented to the Court simply
21 fail to indicate that the alleged misappropriation of trade
22 secrets and/or confidential and proprietary information of the
23 company would constitute irreparable harm. (Pl.'s Moving Br.
24 4, ECF No. 9-6.)

25 First, the Court is not convinced that any

1 enforceable agreement currently exists to preclude defendant
2 from competing with the company, thus precluding a finding of
3 irreparable harm from defendants' ongoing competition.
4 Defendants point out that plaintiff is not even a party to the
5 2003 agreement, which is between Johnson and CC Ford Marketing
6 Group, LLC, a different entity than plaintiff, and in any
7 event, the non-compete/non-solicit obligations under that
8 agreement expired at the latest in 2015. (Defs.' Opp'n Br.
9 12-13, ECF No. 20.)

10 The fact that plaintiff attempted to take this 2003
11 agreement by assignment dated September 11, 2022, presumably in
12 anticipation of filing this request for injunctive relief,
13 calls into serious question its enforceability. (Id.) As to
14 the 2022 consulting agreement between Johnson and CC Ford Group
15 and its affiliates, including plaintiff, the non-compete
16 restriction there only ran from May 26, 2022, through July 17,
17 2022, providing no basis for the prospective injunctive relief
18 sought here. (Am. Compl. ¶¶ 33-34, ECF No. 9.) And as to all
19 the individual defendants, the Court finds that plaintiff has
20 not adequately demonstrated a risk of ongoing harm such that
21 injunctive relief is warranted.

22 The Court expresses no opinion on the ultimate
23 outcome of plaintiff's breach of contract claim or ability to
24 prove that it contractually could restrict defendants from
25 competing or working with the same clients. All the Court

1 holds today is plaintiff falls short of showing a substantial
2 likelihood of success on this issue at this stage.

3 Second, the timing weighs against a finding of
4 irreparable harm. Plaintiff first filed its initial complaint
5 on or about May 16, 2022, without simultaneously seeking
6 injunctive relief, yet this was already two months after
7 Johnson departed from her position as managing director, which
8 occurred on March 25, 2022. (Id. ¶ 30; Defs.' Opp'n Br 1.)
9 Plaintiff then waited until September 2022 to file its TRO
10 application. (See generally Pl.'s Moving Br.)

11 Even assuming that plaintiff did not know about
12 certain breaches until mid-June and that thereafter the parties
13 were attempting to resolve the litigation through mediation,
14 plaintiff still served Johnson its proposed amended complaint
15 in August of 2022, prior to the start of mediation efforts, and
16 could have sought injunctive relief then. (Defs.' Opp'n Br.
17 23.)

18 It is also not lost on the Court that plaintiff
19 sought additional time to submit its reply brief in support of
20 the TRO application. (Pl.'s Stip. of Ext. of Time, ECF No.
21 23.) These factors cut against a finding that emergency relief
22 is warranted here. Where irreparable harm is alleged, an
23 application for a temporary restraining order is expected to be
24 filed expeditiously. See *Nutrasweet Co. v. Vit-Mar*
25 *Enterprises, Inc.*, 112 F.3d 689, 691 (3d Cir. 1997)

1 (application for TRO filed on same day as complaint); Logic
2 Technology Development LLC v. Levy, No. 17-463 2021 WL 3884287,
3 at *2 (D.N.J. Aug. 31, 2021) (noting approvingly that delays of
4 even weeks or months to seek preliminary injunctions undercut a
5 finding that there is irreparable harm).

6 Third, even if plaintiff could prove irreparable
7 harm, the Court finds that such harm could be reduced to a sum
8 certain. Plaintiff seeks to protect its legitimate business
9 interest, that being its confidential and proprietary
10 information as well as its customer relations and goodwill.
11 (Pl.'s Moving Br. 6.)

12 Plaintiff's claims, many of which revolve around the
13 alleged stealing of plaintiff's clients, seem to boil down to
14 the request for disgorgement of profits, which sounds in the
15 realm of monetary damages, making injunctive relief
16 inappropriate. (Id. at 11 (Plaintiff contending, for example,
17 that the Court can compel disgorgement of compensation received
18 by an employee during the period in which the employee violated
19 the duty of loyalty).)

20 Because plaintiff cannot meet its burden to prove
21 irreparable harm, the Court need not run through the other
22 factors. Plaintiff's application for an order to show cause
23 TRO application is denied without prejudice for the failure to
24 allege the requisite irreparable harm. The parties should
25 still, however, feel free to reach out to the magistrate judge

1 to set this matter down for expedited discovery to help reach a
2 speedy resolution on the outstanding claims.

3 So with that, Counsel, that's all that I have for
4 today. Again, all of the citations will be included in the
5 transcript if you should choose to order it. That's all we
6 have for today, folks.

7 (Proceedings adjourned at 2:59 p.m.)

8
9 CERTIFICATE

10
11 I certify that the foregoing is a correct transcript from the
12 record of proceedings in the above-entitled matter.

13
14 /s/Shannan Gagliardi 11/1/22

15 Shannan Gagliardi
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